

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

Criminal Petition No.13243 of 2014

Between:

Thota Arunachalam and another *Petitioners*

And

The State of Telangana rep. By P.P.

High Court, Hyderabad ... *Respondents*

DATE OF JUDGMENT PRONOUNCED: 03.08.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. *Whether Reporters of Local Newspapers*

may be allowed to see the judgments? Yes / No

2. *Whether the copies of judgment may be*

marked to Law Reporters / Journals? Yes / No

3. *Whether Their Lordship wish to*

see the fair copy of the Judgment? Yes / No

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No. 13243 of 2014

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/Accused Nos.1 and 2 seek quashment of the proceedings

in C.C.No.911 of 2014 on the file of learned III Metropolitan Magistrate, Ranga Reddy District at L.B.Nagar.

2) The Inspector of Police, Meerpet Police Station, Cyberabad laid charge sheet against the petitioners with the allegations that on 26.06.2014 on the reliable information about running of a brothel house in the premises bearing Plot No.18, Vignanpuri Colony, Kurmalguda Village, Saroornagar Mandal, Ranga Reddy District, the Assistant Commissioner of Police, Vanasthalipuram, issued warrant to P.Saidulu—Sub Inspector of Police, Meerpet P.S., to raid the said premises and accordingly the S.I of Police with the help of Panchayatdars and his staff proceeded to the said premises at about 18.30 hours and found the house consisting of two rooms. He noticed one person sitting in the first room and one male and female in the second room and he took them into custody. On enquiry, he came to know that petitioner No.1/A1 is an Advocate and petitioner No.2/A2 is a business man. On further enquiry, he came to know that the first petitioner/A1 took the victim woman—Sujatha to the residence of his friend Padma Rao i.e., second petitioner and they were running brothel by paying money to the victim woman. Hence, they drew the proceedings and after investigation laid charge sheet against the petitioners/A1 & A2 for the offences under Sections 3,4,5 and 6 of Immoral Traffic (Prevention) Act, 1956 (for short “PIT Act”).

3) Denying the allegations as false, the learned counsel for petitioners submitted that first petitioner is a practicing Advocate in the High Court and trial Courts and during the course of his profession, he filed W.P.No.15711 of 2013 on behalf of his client—T.M.Bebi against the Commissioner, Cyberabad, Station House Officer, L.B.Nagar and some others questioning the acts of police in harassing his client in a civil dispute. While so, to liquidate the said Writ Petition and to take vengeance against the first petitioner, the second respondent herein who is the Sub Inspector of Police, Meerpet P.S, implicated the petitioners in a false case on the direction of Assistant Commissioner of Police, Vanastalipuram. The learned counsel further submitted that in fact on the date of alleged

offence, the second petitioner who is one of the clients of first petitioner, and the victim woman—Sujatha were seeking some legal advise in the house of second petitioner at Kurmalguda. On their request, the first petitioner went to the residence of second petitioner and the victim woman was briefing the first petitioner about Crime No.248 of 2012 lodged by her in Kachiguda Police Station regarding cheating and rape committed on her daughter and she was seeking advise of the first petitioner in that case and at that time, all of a sudden the second respondent i.e. Sub Inspector of Police, Meerpet P.S., along with some others entered into the premises and conducted search and at that time, the petitioners and the alleged victim woman sitting in the open place. Though the said fact was appraised, the second respondent did not listen and implicated the petitioners in a false case. He argued, continuation of proceedings in this back drop will amount to abuse of process of law.

(a) Learned Counsel alternatively argued that even if the charge sheet allegations are uncontroverted, they would show the petitioners/accused Nos.1 and 2 at best as *customers* to prostitution and on that count also the offences under Sections 3, 4, 5 and 6 of the Act will not attract. On these grounds he sought for quashment of the proceedings.

4) Per contra, learned Assistant Public Prosecutor while opposing the petition argued charge sheet would clearly show that the petitioners were conducting prostitution in the premises and hence, they are liable for offences charged and prayed for dismissal of the petition.

5) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this petition to allow?”

6) **POINT:** As can be seen, the petitioners are seeking quashment on two main grounds. Firstly, the learned counsel for petitioners argued that the second respondent implicated them in a false case bearing grudge against first petitioner for his filing Writ Petition against the Commissioner, Cyberabad Commissionerate and S.H.O., L.B.Nagar

Police Station and secondly on the ground that even if the charge sheet allegations are admitted to be true, the petitioners should at best be treated only as customers to the flesh trade and none of the provisions of the Act including Section 3 to 6 will show the customer as an offender and hence continuation of proceedings will amount to abuse of process of law.

7) Sofaras first argument is concerned, in my considered view, the same cannot be decided in this petition as it needs evidence and appraisal of the various facts. Therefore, the alternative argument which is purely based on law can be looked into.

8) The crux of the charge sheet allegations is that as per the warrant issued by Assistant Commissioner of Police, Vanastalipuram, the SI of Police, Meerpet—LW8 went along with mediators and staff to the plot No.18, Vignanpuri Colony, Kurmalguda Village, Saroornagar Mandal, Ranga Reddy District and found one male person sitting in first room and one male and female in the second room. On enquiry, he came to know that A1 took the victim woman—Sujatha to the room of accused No.2 who is his friend situated at Vignanpuri Colony, Kurmalguda Village, Saroornagar Mandal, Ranga Reddy District and they were doing prostitution by paying money to the victim. These allegations if uncontroverted would reveal as if the petitioners/accused engaged the victim woman for quenching their sexual lust by paying her money. Hence, basically the accused can be referred as *customers* with reference to the victim woman.

9) Hence, the pertinent point is whether the petitioners who are customers to the flesh trade can be charge sheeted under Sections 3 to 6 of PIT Act. A perusal of these provisions would show that Section 3 of the Act deals with punishment for keeping a brothel or allowing premises to be used as a brothel. Section 4 of the Act deals with punishment for living on the earnings of the prostitution. Whereas, Section 5 of the Act deals with procuring, inducing or taking persons for the sake of prostitution. Then, Section 6 deals with detaining any person in any brothel or in any premises with an intent to have sexual

intercourse. Obviously, the allegation against the petitioners is not that of either running brothel house or procuring women for the purpose of prostitution or living on the earnings of the prostitution or detaining any person continuously for having sexual intercourse. As already stated, the charge sheet allegations even if uncontroverted would only project the petitioners as mere customers. The legal aspect whether customer is liable for prosecution is no more *res integra* and in the followings decisions this court held that provisions of the PIT Act cannot be invoked for prosecuting them.

1. Goenka Sajan Kumar vs. The State of A.P.

2. Z. Lourdiah Naidu vs. State of Andhra Pradesh

Of course, in a subsequent decision in **Mohammed Shaeed v. The State of Telangana** this Court though followed the earlier precedential law and quashed the proceedings against the petitioner in that case who was also customer, but however, strongly opined that a customer to the flesh trade was also an offender and therefore, there was a need to amend the PIT Act suitably to bring the customers within the fold of the Act and accordingly recommended to the Central Government. Till date no amendment has been made to the PIT Act.

10) In these circumstances, in the considered view of this Court, continuation of the criminal proceedings against the petitioners would amount to abuse of process of the Court and hence liable to be quashed.

11) In the result, this Criminal Petition is allowed and the proceedings in C.C.No.911 of 2014 on the file of learned III Metropolitan Magistrate, Ranga Reddy District at L.B.Nagar are hereby quashed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 03.08.2015

Murthy